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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, WEST DISTRICT

KOSSORIS SEARCH, INC.,

Plaintiff,

v.

KATTEN MUCHIN ROSENMAN, LLP, a limited liability partnership, and DOES 1 through 10, inclusive,

Defendants.

Case No. SC129472

NOTICE OF RULING ON DEFENDANT KATTEN MUCHIN ROSENMAN LLP'S MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION

Hon. Jay Ford III

Date: August 23, 2019
Time: 8:30 a.m.
Dept.: O

Complaint Filed: June 25, 2018
Trial Date: October 28, 2019

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on August 23, 2019, at 8:30 a.m. in Department O of the above-captioned Court, defendant Katten Muchin Rosenman's ("Katten") Motion for Summary Judgment, or in the Alternative, Summary Adjudication, came on for a regularly-noticed hearing. Ryan J. Larsen and Ashley T. Brines appeared on behalf of Katten. Marc L. Mukasey and Kate Olivieri appeared on behalf of plaintiff Kossoris Search, Inc. ("Kossoris").

The Court reviewed the parties' filings, heard argument from counsel, and ruled as follows:

- The Motion for Summary Judgment is denied.
- The Motion for Summary Adjudication on the First Cause of Action for Breach of Contract is denied.
- The Motion for Summary Adjudication on the Second Cause of Action for Promissory Estoppel is granted.
- The Motion for Summary Adjudication on the Third Cause of Action for Quantum Meruit is denied.
- Kossoris's Request for Judicial Notice is denied.

The Court's findings are set forth in the Court's Tentative Ruling, which the Court adopted as its final ruling. A true and correct copy of the Court's Tentative Ruling is attached hereto as **Exhibit A**. Katten was ordered to give notice.

Dated: August 27, 2019

KATTEN MUCHIN ROSENMAN LLP

By: _____
Ashley T. Brines
Attorneys for defendant Katten Muchin Rosenman LLP

Exhibit A

Case Name:	**Kossoris Search Inc. v. Katten Muchin Rosenman LLP**		
Case No.:	SC129472	**Complaint Filed:**	6-25-18
Hearing:	8-23-19	**Motion C/O:**	10-14-19
Calendar #:	7	**Discovery C/O:**	9-28-19
Notice:	OK	**Trial Date:**	10-28-19

SUBJECT: **MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION**
MOVING PARTY: Defendant Katten Muchin Rosenman, LLP
RESP. PARTY: Plaintiff Kossoris Search, Inc.

TENTATIVE RULING

Defendant's Motion for Summary Judgment is DENIED. Defendant's Motion for Summary Adjudication of the 2nd cause of action for promissory estoppel is GRANTED and of the 1st and 3rd cause of action is DENIED. Plaintiff's RJN is DENIED.

Triable issues of fact exist as to the 1st cause of action for breach of contract. The 8-16-15 email is sufficiently definite such that the Court cannot find as a matter of law on summary judgment that parties never entered into an enforceable agreement. See Defendant's SSUMF No. 40; see Bustamante v. Intuit, Inc. (2006) 141 Cal.App.4th 199, 209 ("a contract will be enforced if it is sufficiently definite (and this is a question of law) for the court to ascertain the parties' obligations and to determine whether those obligations have been performed or breached"). "Whether parties have reached an agreement and on what terms are questions of fact for the fact finder when conflicting versions of the parties' negotiations require a determination of credibility." Hebberd-Kulow Enterprisies, Inc v. Kelomar, Inc. (2013) 218 Cal.App.4th 272, 283; CACI No. 302, Judicial Council of California Jury Instructions.

The lack of a specific amount of fee due does not render the contract illusory, particularly given that the 8-16-15 email does not indicate that parties are merely agreeing to agree, the contract does not involve real property and Plaintiff immediately disclosed the information upon Sergi's confirmation of the agreement terms, which were payment of a fee if Plaintiff disclosed Solomon's name without his consent and if Katten was interested in Solomon. CC §1611 ("[w]hen a contract does not determine the amount of the consideration, nor the method by which it is to be ascertained, or when it leaves the amount thereof to the discretion of an interested party, the consideration must be so much money as the object of the contract is reasonably worth"); California Lettuce Growers v. Union Sugar Co. (1955) 45 Cal.2d 474, 482 ("Unexpressed provisions of a contract may be inferred from the writing or external facts. Thus it is well settled that a contract need not specify price if it can be objectively determined. Section 1729 of the Civil Code recognizes three ways of determining price. It can be fixed by the parties, determined from the prior course of dealings of the parties, and if these procedures are inapplicable, the contract price may be deemed the reasonable price under the circumstances of the particular case. The absence of price provisions does not render an otherwise valid contract void. Civ. Code ss 1728, 1655, 1656; (Citation.) Unless the parties intended to leave the determination of price to future negotiations, courts should make the necessary findings and set the price under the applicable code provisions.") Roberts v. Adams (1958) 164 Cal.App.2d 312,

315 (law leans against destruction of contract and well settled that a contract need not specify price if it can be objectively determined"

In addition, triable issues of fact remain as to whether Plaintiff's fee was contingent upon it being the "procuring cause" and Solomon joining Katten within 6 to 12 months of Plaintiff's disclosure of his identity. There is no express requirement in the 8-16-15 email that Plaintiff be the procuring cause to earn her fee or that the candidate join Katten within a particular time period. In fact, the express language states that payment would be due "no exception" if Plaintiff disclosed the identity and Katten demonstrated interest in Solomon. See Defendant's SSUMF No. 40. At best for Defendant, Defendant creates an ambiguity and Plaintiff offers a reasonable interpretation of that ambiguity. Under such circumstances, summary judgment in Defendant's favor would be improper.

Triable issues of fact also exist as to the defense of fraudulent nondisclosure. Defendant argues it is entitled to rescission, because Plaintiff failed to disclose the fact that Solomon did not wish to join Katten. First, the 8-17-15 emails from Solomon to Plaintiff do not so indicate. Second, Solomon's 8-17-15 emails indicate that he did not want Plaintiff to disclose his name to firms and that she did not have any authority to represent him. See Dec. of R. Larsen, Ex. A, Depo of Kossoris, Exs. 122-123. Given that Sergi interpreted the 8-16-15 email to mean that Kossoris did not have Solomon's consent to disclose his identity of firms, reasonable minds could conclude that Solomon's statements in the 8-17-15 emails were immaterial to Katten when it agreed to the terms set forth in Kossoris's 8-16-15 email. See Dec. of M. Mukasey, Ex. C, 25:22-25, 26:1-16.

No triable issues of fact remain as to the 2nd cause of action for promissory estoppel. As explained in Garcia v. World Sav., FSB (2010) 183 Cal.App.4th 1031, "A promise is an indispensable element of the doctrine of promissory estoppel. The cases are uniform in holding that this doctrine cannot be invoked and must be held inapplicable in the absence of a showing that a promise had been made upon which the complaining party relied to his prejudice. *The promise must, in addition, be clear and unambiguous in its terms.*" Id. at 1044. As discussed in connection with the breach of contract claim, the promise made in the 8-16-15 email exchange regarding the meaning of the phrase "no exceptions" is ambiguous. "(I)f extrinsic evidence is needed to interpret a promise, then obviously the promise is not clear and unambiguous" Id. at 1041.

Finally, triable issues of fact remain as to the 3rd cause of action for quantum meruit. First, Defendant fails to present any authority holding that quantum meruit, a common count, is not a recognized cause of action, as opposed to unjust enrichment. Second, triable issues of fact remain as to whether Plaintiff conferred a benefit on Defendant, the only element of quantum meruit attacked by Defendant on summary judgment. See Dec. of M. Mukasey, 18:11-23. 24:18-25 to 25:1-4.

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 2029 Century Park East, Suite 2600, Los Angeles, California 90067.

On August 27, 2019, I served the foregoing document(s) **NOTICE OF RULING ON DEFENDANT KATTEN MUCHIN ROSENMAN LLP'S MOTION FOR SUMMARY JUDGMENT MOTION, OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION** addressed as follows:

Joseph R. Ashby
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(X) By electronically filing with the Court and electronically serving true and correct copies of the document(s) on counsel of record listed above through First Legal Attorney Service.

I declare under the penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 27, 2019, at Los Angeles, California

Malinda M. Washington